(2016) 10 AHC CK 0008

In the Allahabad High Court

Case No : Civil Misc. Review Application No. 85917 of 2014 In Writ B. No. 66891 of 2013

Damodar APPELLANT

Vs

Dy. Director of Consolidation RESPONDENT

Date of Decision : 21-10-2016

Acts Referred:

Evidence Act, 1872 — Section 68, Section 69

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2016) 133 RD 823

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : S.C. Verma and Gokran Singh, Advocates, for the Petitioner; C.S.C. Mahendra Kumar Shukla and R.S. Gupta, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J - Heard Sri Ateeq Ahamad along with Sri Gorakaran Singh for the review applicant.

2. The writ petition was filed against the order of Deputy Director of Consolidation dated 28.10.2013 passed in title proceeding under U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as "the Act").

3. After hearing the parties, this Court found that the claim of the petitioner was set up on the basis of unregistered will and Deputy Director of Consolidation found that photograph of the executant affixed on the will as well as the photograph affixed on his driving licence were entirely different. In the will Damodor (the petitioner) has been denoted as son''s son but the petitioner is a stranger to the family of Subedar and recital in the will was incorrect. Thus, there is a strong suspicious circumstance and no explanation has been given by the petitioner in this respect. Therefore, will was rightly disbelieved by the Deputy Director of Consolidation and finding in this respect cannot be set aside.

4. Now the petitioner has filed this review application on the ground that Consolidation Officer in the order dated 24.2.1999 after considering the entire facts on the record had held that due execution of will dated 16.12.1987 executed by Subedar, was proved. So far as judgment of Settlement Officer, Consolidation is concerned, it was an ex parte judgment inasmuch as on 19.9.2002 the advocates had passed a resolution for strike as such counsel for the petitioner could not appear before Settlement Officer, Consolidation and in his absence the case was decided on merit. The recall application was rejected by Settlement Officer, Consolidation on wholly irrelevant consideration that the recall application was not signed by the petitioner although it was signed by the counsel for the petitioner. In view of the fact, the order of Settlement Officer, Consolidation was an ex pare order. Although a specific ground was raised in this respect before Deputy Director of Consolidation but he had illegally held that in the fact of the case the order of Settlement Officer, Consolidation was not an ex parte order. The due execution of the will was duly proved from the statement of attesting witnesses, Ram Awadh Singh. The will also contained identification of signature of Subedar by two advocates as well as Naib Tehsildar. Deputy Director of Consolidation did not notice the fact relating to identification of signature of Subedar by two advocates as well as Naib Tehsildar and illegally ignored the will. He submits that in the will the executant had noted that Damodar was in his relation as Pota. In the earlier part of the will he has clearly stated that he has no issue(son or daughter). Thus, in the light of earlier statement, use of the word Pota in relation is not the exact Pota but it was a relation. Thus, this was not a suspicious circumstance and the will could not be ignored on this ground and dismissal of the writ petition is illegal and judgment is liable to be reviewed.

5. I have considered the arguments of the counsel for the review-applicant.

6. So far as the order of Settlement Officer, Consolidation is concerned under Section 48 of the Act, Deputy Director of Consolidation is competent to decide all the issues relating to law and fact and record his independent finding. Although it is alleged that before Settlement Officer, Consolidation the appeal could not be argued on behalf of the petitioner but the order of Deputy Director of Consolidation was passed after hearing him on merit. Thus, in the absence of any illegality in the order of Deputy Director of Consolidation on merit his order is not liable to be set aside merely on the ground that the order of Settlement Officer, Consolidation was an ex parte order.

7. So far as the finding of Deputy Director of Consolidation that the photograph affixed on the will and the photograph affixed on his driving licence were not tallying is concerned, counsel for the review-applicant states that driving licence was issued in the year 1964 while the will was executed in the year 1987 and during this 23 years there may be changes in the photograph as such finding of Deputy Director of Consolidation in this respect was incorrect. A perusal of the judgment of Consolidation Officer shows that Consolidation Officer has totally ignored the driving licence of Subedar although it was filed before him and was

on the record. There is no evidence to suggest that photographs of Subedar on the driving licence and on the will were of the same person and due to lapse of 23 years, photographs on the two documents were no tallying. The will as well as driving licence have been filed along with review application and a bare perusal of two photographs shows that these two photographs are entirely different. In any case if these were of the same persons, then the petitioner could have adduced evidence in this respect also. The finding of the fact recorded by Deputy Director of Consolidation are based on perusal of original documents as well as appraisal of evidence cannot be interfered by this Court in exercise of writ jurisdiction.

8. So far as identification of Subedar by two advocates and Naib Tehsildar is concerned, it appears to be a suspicious act and is an attempt to create evidence by the petitioner inasmuch as the will runs into two pages and the signature of Subedar on none of the pages were identified by any one. It is alleged that on the back side of the will signature was identified and there was no occasion for Subedar to sign the will on the back side inasmuch as it was an unregistered document and in normal course contents of the will used to be signed by the executant. Further, if Subedar was produced before Naib Tehsildar and was brought upto Tehsil for verification of his signature then there could have been no reason for not getting the will registered. In such circumstances, the argument in this respect at the stage of review is not liable to be accepted.

9. The will is required to be proved according to the provision of Sections 68 and 69 of Evidence Act. If the will is surrounded by suspicious circumstances then the propounder of the will is further required to remove the suspicious circumstances. In this Case Deputy Director of Consolidation found that will was surrounded by suspicious circumstances inasmuch as the petitioner did not belong to the family of Subedar and execution of will in his favour would deprive the brothers'' sons from inheritance which is an unnatural act in the absence of any strong reason for doing so. This was a strong suspicious circumstances. No evidence has been given by the petitioner to explain suspicious circumstances. The attesting witness Ram Awadh Singh in his statement has stated that when the will was produced for registration before Sub Registrar he began to demand excessive money due to which the will was not registered. Such a statement is not liable to be believed because if the Sub Registrar had refused to register the will then under the provisions of Indian Registration Act, 1908 the petitioner should approach Registrar or in the alternative file application before the District Judge under Indian Succession Act, 1925. The Naib Tehsildar is not the competent authority for registration of the will.

10. In view of the aforesaid discussion, the review application has no merit and it is rejected.

